

**Senate File 2328 - Introduced**

SENATE FILE 2328  
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 3057)

**A BILL FOR**

1 An Act relating to the sale or acquisition of certain  
2 utilities.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1     Section 1. NEW SECTION.   **388.2A Procedure for disposal of**  
2 **city utility by sale.**

3     1. A proposal to discontinue a city utility and dispose of  
4 such utility by sale, whether upon the council's own motion  
5 or upon the receipt of a valid petition pursuant to section  
6 388.2, subsection 1, paragraph "b", shall not be subject to the  
7 approval of the voters of the city pursuant to section 388.2  
8 at any election unless the governing body of the city utility  
9 meets the requirements of this section.

10    2. a. (1) The governing body of the city utility shall  
11 determine the fair market value of the utility system after  
12 obtaining two appraisals of the system's fair market value.  
13 One appraisal shall be obtained from an independent appraiser  
14 selected by the governing body, and the other appraisal shall  
15 be obtained from an independent appraiser approved by the  
16 Iowa utilities board. Both appraisals shall be conducted  
17 in conformance with the uniform standards of professional  
18 appraisal practice or a substantially similar organization.

19    (2) Any appraisal obtained pursuant to this paragraph  
20 shall consider the depreciated value of the capital assets  
21 to be sold, the loss of future revenues to the city utility,  
22 including the right to generate surpluses, and the cost of any  
23 capital improvements reasonably necessary to provide adequate  
24 service and facilities to the city utility's customers.

25    b. After considering the appraisals obtained pursuant to  
26 paragraph "a", the governing body shall establish the city  
27 utility's fair market value. The fair market value shall be  
28 the greater of any of the following:

29    (1) The average of the two appraisals obtained pursuant to  
30 paragraph "a".

31    (2) The depreciated value of the capital assets to be sold.

32    (3) The amount necessary to retire all of the city's  
33 outstanding revenue and general obligations issued for purposes  
34 of the city utility.

35    c. The governing body's determination of a city utility's

1 fair market value pursuant to this subsection shall not be  
2 dispositive of the city utility's system price, which shall be  
3 subject to negotiation by the governing body.

4     *d.* The governing body shall prepare an inventory of the  
5 city utility's real and personal property, and a statement of  
6 net position or balance sheet of the city utility, including  
7 all assets, liabilities, outstanding revenue, and general  
8 obligations used to finance the city utility system.

9     *e.* The governing body shall prepare a financial information  
10 statement of the city utility that includes current and  
11 projected rate schedules for the next five fiscal years, as  
12 well as the five most recent fiscal year revenue statements, if  
13 such statements exist, and a projection of the city utility's  
14 revenue statements for the next five fiscal years.

15     *f.* The governing body shall consider alternatives to  
16 disposing of the city utility system by sale, including  
17 entering into an agreement pursuant to chapter 28E, or into a  
18 finance agreement, purchase agreement, or lease agreement with  
19 another entity described in section 476.1, subsection 5.

20     *g.* (1) The governing body shall make available on its  
21 internet site, at least sixty days prior to submitting a  
22 proposal for election pursuant to section 388.2, a copy of each  
23 item listed in paragraphs "a" through "f" of this subsection.

24     (2) If, at the time of posting information pursuant to  
25 subparagraph (1), the governing body has received any offers or  
26 appraisals of fair market value from any prospective purchasers  
27 of the city utility system in connection with a proposal to  
28 discontinue the city utility and dispose of such utility by  
29 sale, then the governing body shall make available on its  
30 internet site each offer and appraisal then in existence.  
31 Proprietary information of a rate-regulated public utility  
32 under chapter 476 that is exempt from disclosure pursuant to  
33 section 22.7 may be withheld from disclosure on the governing  
34 body's internet site. The governing body may continue to  
35 receive new or revised offers or appraisals thereafter.

1     (3) The governing body shall make a good-faith effort to  
2 provide, by regular mail to each property owner of the city and  
3 each ratepayer of the city utility, a notice of the proposal to  
4 dispose of the city utility by sale, a summary of the proposal,  
5 a summary of the information described in subparagraphs (1) and  
6 (2), and instructions for locating the information described  
7 in subparagraphs (1) and (2) on the governing body's internet  
8 site.

9     3. Upon the governing body meeting the requirements  
10 of subsection 2, a city council may submit a proposal to  
11 discontinue and dispose of a city utility pursuant to section  
12 388.2.

13     4. If a proposal to discontinue and dispose of a city  
14 utility is to be submitted to voters following the receipt  
15 of a valid petition pursuant to section 388.2, subsection 1,  
16 paragraph "b", the council shall submit the proposal at the next  
17 general election, regular city election, or a special election  
18 called for that purpose, within one hundred twenty days after  
19 the governing body of the city utility meets the requirements  
20 of subsection 2.

21     5. A proposal to discontinue and dispose of a city utility  
22 by sale that is approved by the voters pursuant to section  
23 388.2, subsection 2, paragraph "a", shall not require the  
24 governing body or any purchasing entity to finalize a sale of  
25 the city utility.

26     6. No action may be brought which questions the legality of  
27 the election or the city and governing body's compliance with  
28 this section, except as provided in section 57.1, within twenty  
29 days of the canvass of votes for the election by the county  
30 board of supervisors.

31     Sec. 2. Section 476.72, subsection 4, Code 2018, is amended  
32 to read as follows:

33     4. "*Public utility*" means a ~~gas or electric~~ rate-regulated  
34 public utility providing electric, gas, water, sanitary sewage,  
35 or storm water drainage service, or any combination thereof.

1     Sec. 3. NEW SECTION.   **476.84 Water, sanitary sewer, and**  
2 **storm water utilities — acquisitions — advance ratemaking.**

3     1. This section applies to the acquisition of water,  
4 sanitary sewer, and storm water utilities by rate-regulated  
5 public utilities. This section does not apply to the  
6 acquisition of such utilities by non-rate-regulated entities  
7 described in section 476.1, subsection 5.

8     2. *a.* A public utility shall not acquire, in whole or in  
9 part, a water, sanitary sewer, or storm water utility with a  
10 fair market value of five hundred thousand dollars or more  
11 from a non-rate-regulated entity described in section 476.1,  
12 subsection 5, unless the board first approves the acquisition.  
13 In addition, if the utility to be acquired is a city utility,  
14 then the public utility shall not acquire the city utility  
15 until the city has first met the requirements of section  
16 388.2A.

17    *b.* If a water, sanitary sewer, or storm water utility that  
18 is the subject of an acquisition meets the requirements of  
19 paragraph “a”, then the acquiring public utility may apply to  
20 the board, prior to the completion of the acquisition, for  
21 advance approval of a proposed initial tariff for providing  
22 service to customers of the acquired utility.

23    *c.* As part of its review of the proposed acquisition,  
24 the board shall specify in advance, by order issued after a  
25 contested case proceeding, the ratemaking principles that will  
26 apply when the costs of the acquired utility are included in  
27 regulated rates. The lesser of the sale price or the fair  
28 market value of the acquired utility as established pursuant  
29 to section 388.2A, subsection 2, shall be used in determining  
30 the applicable ratemaking principles. In determining the  
31 applicable ratemaking principles, the board shall not be  
32 limited to traditional ratemaking principles or traditional  
33 cost recovery mechanisms. Among the principles and mechanisms  
34 the board may consider, the board has the authority to approve  
35 ratemaking principles that provide for reasonable restrictions



1 the requirements of the bill.

2 The bill requires the governing body of the city utility  
3 to determine the fair market value of the utility system, as  
4 specified in the bill. The governing body's determination of  
5 the city utility's fair market value shall not be dispositive  
6 of the city utility's system price, which shall be subject to  
7 negotiation by the governing body.

8 The bill provides that the governing body shall prepare an  
9 inventory of the city utility's real and personal property,  
10 and a statement of net position or balance sheet, including  
11 all assets, liabilities, and outstanding revenue and general  
12 obligations used to finance the city utility system. The  
13 bill also requires the governing body to prepare a financial  
14 information statement of the city utility, as specified in the  
15 bill.

16 The bill requires the governing body to consider  
17 alternatives to disposing of the city utility by sale,  
18 including entering into an agreement pursuant to Code chapter  
19 28E, or into a finance agreement, purchase agreement, or lease  
20 agreement with certain entities.

21 The bill requires the governing body to make certain  
22 information available on its internet site, as specified in  
23 the bill. The bill also requires the governing body to make  
24 a good-faith effort to provide certain information by regular  
25 mail to each property owner of the city and each ratepayer of  
26 the city utility, as specified in the bill.

27 The bill provides that upon a governing body meeting the  
28 requirements specified in the bill, a city council may submit a  
29 proposal to discontinue and dispose of a city utility pursuant  
30 to Code section 388.2. If such a proposal is to be submitted  
31 to voters, the council shall submit the proposal at the next  
32 general election, regular city election, or a special election  
33 called for that purpose, within 120 days after the governing  
34 body meets the requirements of the bill. Any such proposal  
35 approved by the voters shall not require the governing body or

1 any purchasing entity to finalize a sale of the city utility.  
2 No action may be brought which questions the legality of an  
3 election or the city and governing body's compliance with the  
4 bill, except as provided in Code section 57.1, within 20 days  
5 of the canvass of votes by the county board of supervisors.

6 The bill also establishes a procedure for the acquisition  
7 of water, sanitary sewer, and storm water utilities by  
8 rate-regulated public utilities, as defined in the bill.

9 The bill provides that a public utility shall not acquire,  
10 in whole or in part, a water, sanitary sewer, or storm water  
11 utility with a fair market value of \$500,000 or more from  
12 certain non-rate-regulated entities, unless the Iowa utilities  
13 board first approves the acquisition. If the utility to be  
14 required is a city utility, then the city must first meet the  
15 requirements for the disposal of city utilities by sale, as  
16 specified in the bill, before such acquisition.

17 The bill allows an acquiring public utility to apply to the  
18 board, prior to the completion of an acquisition of a water,  
19 sanitary sewer, or storm water utility, for advance approval of  
20 a proposed initial tariff for providing service to customers  
21 of the acquired utility.

22 The bill provides that as part of its review of the proposed  
23 acquisition, the board shall specify in advance, by order  
24 issued after a contested case proceeding, the ratemaking  
25 principles that will apply when the costs of the acquired  
26 utility are included in regulated rates. The lesser of the  
27 sale price or the fair market value of the acquired utility  
28 shall be used in determining the applicable ratemaking  
29 principles. In determining such ratemaking principles, the  
30 board shall not be limited to traditional ratemaking principles  
31 or cost recovery mechanisms, and may approve ratemaking  
32 principles that provide for reasonable restrictions upon the  
33 ability of the public utility to seek an increase in specified  
34 regulated rates for a period of time.

35 The bill provides that in determining the applicable



1 ratemaking principles, the board shall find that the proposed  
2 acquisition will result in just and reasonable rates to all  
3 customers, including but not limited to existing customers.  
4 In making this finding, the board may consider any factor it  
5 reasonable includes may affect future rates, as specified  
6 in the bill. The board shall consider whether there are  
7 ratemaking principles that will result in just and reasonable  
8 rates to all customers in determining whether to approve or  
9 disapprove a proposed acquisition.

10 The bill provides that upon the approval of a proposal  
11 for acquisition by board order, the parties subject to the  
12 acquisition shall have the option of either proceeding with  
13 the acquisition or not, subject to any applicable termination  
14 provisions contained in the acquisition agreement.

15 The bill provides that notwithstanding any provisions of  
16 Code chapter 476 to the contrary, the ratemaking principles  
17 established by the board pursuant to the bill shall be binding  
18 with regard to the acquired utility in any subsequent rate  
19 proceeding.